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No. 96-516

In the Supreme Court of the United States

OCTOBER TERM, 1996

R.R. DONNELLEY & SONS COMPANY,
Petitioner

v.

LAWRENCE H. FUCHS, Executive Director of the Department of Revenue of the State of Florida, and DEPARTMENT OF REVENUE, STATE OF FLORIDA,
Respondents

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, First District

MOTION OF THE NEWSPAPER ASSOCIATION OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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MOTION OF THE NEWSPAPER ASSOCIATION OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Pursuant to Rule 37.2 of the Rules of this Court, The Newspaper Association of America ("NAA") requests leave to file the accompanying brief as *amicus curiae* in support of the petition for a writ of certiorari. Counsel for petitioner has consented to the filing of this brief, but counsel for respondent has declined to give his consent.

NAA is a nonprofit organization representing the interests of more than 1,600 newspapers, 57 of which publish throughout the State of Florida. NAA members account for approximately 87 percent of the daily newspaper circulation in the United States.

As this Court recognized in *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983),

a State tax scheme that subjects the press to special or unequal burdens threatens First Amendment freedoms, whether or not it is possible to prove that hostility toward the press motivated the legislature to adopt the tax structure. NAA's predecessor, the American Newspaper Publishers Association, participated in *Minneapolis Star* as *amicus curiae* supporting the analysis and result adopted by the Court.

The certiorari petition filed by R.R. Donnelley and now before the Court raises a similar issue of considerable importance to newspaper publishers in Florida and throughout the country. Florida allows virtually all manufacturers of goods to seek an exemption from taxes on capital purchases, *except* "printing or publishing firms," which are expressly denied eligibility for the exemption. Fla. Stat. Ann. 212.08(5)(b)5. Florida's tax scheme, like the one that this Court held unconstitutional in *Minneapolis Star*, thereby impermissibly "singl[es] out publications" to pay a substantial tax from which all other manufacturers of retail goods can be exempted. 460 U.S. at 581.

This discriminatory tax threatens core First Amendment values that are of special concern to NAA members, who have both financial and policy interests in the proper resolution of the issues before the Court. Additionally, by singling out newspaper printers and publishers to pay substantial taxes on printing press purchases, the tax directly threatens the economic well-being of NAA's Florida members.

NAA can provide the Court with a broader context for assessing the importance of the issues posed by the petition for a writ of certiorari.

For the foregoing reasons, the Court should grant the motion of NAA to file the accompanying brief as *amicus curiae* in support of the petition.

Respectfully submitted.

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BRIEF FOR THE NEWSPAPER ASSOCIATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICUS CURIAE*

The interest of the Newspaper Association of America as *amicus curiae* is described in the preceding motion for leave to file this brief.

SUMMARY OF ARGUMENT

Florida permits virtually all manufacturers of retail goods to seek an exemption from taxes on certain capital investments, *except* "printing or publishing firms," which are expressly denied the exemption. Fla. Stat. Ann. 212.08(5)(b)5. Florida's tax scheme, like the one that this Court held unconstitutional in *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U.S. 575, 581

(1983), thereby impermissibly "singl[es] out publications" to bear a substantial tax burden. This Court repeatedly has held that such differential tax burdens, targeted at the press, are "presumptively unconstitutional" and subject to strict scrutiny. *Id.* at 585; accord *Leathers* v. *Medlock*, 499 U.S. 439, 447 (1991).

The Florida appellate court nevertheless held that Florida's tax scheme need be supported only by a "conceivable rational basis," and on that reasoning, upheld the statute. Pet. App. 4a-5a. In so doing, the court below severely misinterpreted this Court's decision in *Leathers*, *supra*, and dramatically constricted the scope of the First Amendment protection of freedom of the press. The Florida appellate court's decision will impose severe economic burdens on Florida publishers and printers, many of whom are members of the amicus Newspaper Association of America, interfering with their ability to maintain viable businesses. This Court should accept the Florida court's explicit request for further guidance and grant further review.

ARGUMENT

I. ANY TAX SCHEME THAT IMPOSES SPECIAL TAX BURDENS ON PUBLISHERS VIOLATES THE FIRST AMENDMENT PROTECTIONS OF FREE SPEECH AND FREE PRESS.

Sixty years ago the Court struck down a discriminatory State tax on the press, relying on the First Amendment's profound and abiding principle that "an untrammeled press [is] a vital source of public information" and that selective taxation endangers the flow of this information. *Grosjean* v. *American Press Co.*, 297 U.S. 233, 250 (1936).

In *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983), the Court extended this principle to nullify a State use tax on large purchases of ink and paper, the staples of newspaper publishing. The State's tax scheme, like the Florida tax

scheme that petitioner is challenging, denied to publishers a tax exemption available to all other manufacturers of goods for retail. *Id.* at 582. This Court held that such "*differential treatment*" of newspaper publishers is "presumptively unconstitutional" and must fall, unless the State establishes "a counterbalancing interest of compelling importance that it cannot achieve without differential taxation." *Id.* at 585 (emphasis added).

Some commentators optimistically predicted that the "bright-line standard" the Court created in *Minneapolis Star*, which "provides clear guidance for legislatures and lower courts," would guarantee that the press would "remain unthreatened by future inequitable taxation." Robert M. Cover, *The Supreme Court, 1982 Term*, 97 HARV. L. REV. 1, 177 (1983). Unfortunately, however, as this case demonstrates, not all the States have gotten the message. Consequently, it has been necessary for the Court to step in from time to time to reenforce or clarify the governing principles.

Thus, for example, in *Arkansas Writers' Project* v. *Ragland*, 481 U.S. 221 (1987), the Court invalidated an Arkansas sales tax scheme that subjected general interest magazines to the sales tax, while exempting other kinds of publications, including professional, trade and sports journals. The Court rejected the State's argument that the tax could survive because it applied to most kinds of businesses and thus did not "single out" the press. The fatal flaw was that, by exempting some magazines from the tax while subjecting others to it, the State unconstitutionally discriminated against a subclass of the press, treating "some magazines less favorably than others." *Id.* at 229.[1]

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[1] The Court reached a similar result in *Texas Monthly, Inc.* v. *Bullock*, 489 U.S. 1 (1989), concluding that the Establishment Clause barred Texas from imposing a sales tax on all periodical publications, except those published by a religious faith and sacred

Most recently, the Court upheld Arkansas' extension of its general "gross receipts tax" to cable television systems, despite the State's retention of an exemption from the tax for newspapers and magazines. *Leathers* v. *Medlock*, 499 U.S. 439 (1991). The Court reaffirmed its holdings in *Minneapolis Star* and *Grosjean* that "differential taxation of First Amendment speakers is constitutionally suspect" in at least three situations: (1) if it "single[s] out the press"; (2) "if it targets a small group of speakers"; or (3) "if it discriminates on the basis of the content of taxpayer speech." *Id.* at 447. Since Arkansas had simply included cable operators within the large majority of businesses subject to the tax, the Court found that application of the tax neither improperly singled out the media as distinguished from other businesses, nor "target[ed] a narrow group to bear fully the burden of the tax." *Id.* at 448. Further, after careful analysis, the Court was satisfied that the disparate tax treatment of different types of media did not suggest an intent to discriminate on the basis of content. *Id.* at 449-450.

Even though the Court has repeatedly reaffirmed the *Grosjean-Minneapolis Star* doctrine, some of the States remain insensitive to the constitutional command to tread carefully when treating the press differently from other taxpayers. For example, when Massachusetts sought to enforce a state law denying newspaper publishers a tax exemption available to other manufacturers for the purchase of machinery and materials — much like the Florida statute at issue here — the Supreme Judicial Court had to intervene to strike down the law. *Globe Newspaper Co.* v. *Commissioner of Revenue*, 571 N.E.2d 617 (Mass. 1991). In the present case, however, the Florida courts failed to correct the Florida legislature's disregard for the *Grosjean-Minneapolis Star* doctrine.

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to that faith.

II. THE FLORIDA TAX ON NEW CAPITAL INVESTMENT IN PRINTING PRESSES AND OTHER PUBLISHING EQUIPMENT DISCRIMINATORILY BURDENS NEWSPAPER PUBLISHERS AND PRINTERS, TARGETING THEM ALONE AMONG ALL MANUFACTURERS OF RETAIL PRODUCTS.

Although the press is not immune from the ordinary burdens of taxes of general applicability, the Florida tax structure challenged by petitioner leaves publishers of written communication the only manufacturers of goods subject to the tax on new capital investments. The Florida scheme exempts from the 6% sales tax on capital equipment all manufacturers of "tangible personal property," *except* "printing or publishing firms" and several other business categories, such as mining companies, gas and oil exploration companies, and restaurants. Fla. Stat. Ann. 212.08(5)(b)5.

The State, however, did not dispute (Pet. 5 & n.3), and the courts below appear to have assumed (Pet. App. 6a-7a, 13a), that, with the possible exception of the restaurant industry, all of the other business categories purportedly excepted from the exemption along with printers and publishers either could not qualify for the exemption for other reasons or did not need the tax exemption in the first place.[2] Thus, the only *manufacturers* of tangible personal property to which the State denies the exemption are printing and publishing companies. Indeed, the only *businesses* of any

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[2] Most of these businesses are not manufacturers engaged in producing "tangible personal property," and thus would not be members of the class entitled to the exemption even absent their express exclusion. Pet. 5 & n.3 (citing deposition testimony of the designated witness from the State Department of Revenue). The other business category, electrical utility companies, already enjoys a separate statutory exemption from the tax, mooting its exclusion from this exemption. Fla. Stat. Ann. 212.08(5)(c).

sort that manufacture, compound, process, or produce tangible personal property to which the State denies the exemption are printing and publishing companies, and restaurants. Pet. App. 6a-7a, 13a; Fla. Stat. Ann. 212.08(5)(b)5.

The statute's plain terms therefore single out for differential and burdensome treatment those manufacturers that are involved in expression protected by the First Amendment. *Ibid.* Such targeting of the media for taxes that no other manufacturer of retail goods must pay is presumptively unconstitutional. *Minneapolis Star*, 460 U.S. at 585; *Leathers*, 499 U.S. at 446.

Florida's enumeration of other irrelevant categories of businesses that are ineligible for the exemption cannot insulate its tax statute from the strict scrutiny this Court traditionally applies to such press-specific tax burdens. If Florida's exercise in artful drafting were sufficient to evade strict scrutiny, the States would have a potent weapon for undermining the *Grosjean-Minneapolis Star* doctrine.

III. ACCEPTANCE OF THE ARGUMENTS ADVANCED TO JUSTIFY FLORIDA'S SCHEME WOULD UNDERMINE THE FIRST AMENDMENT'S GUARANTEE OF FREEDOM OF THE PRESS.

A. Since A Tax That Singles Out the Press Suggests An Improper Legislative Motive, the Tax Must Be Subjected To Strict Scrutiny.

The Florida courts below relied heavily on this Court's decision in *Leathers*, *supra*, to support their opinion that Florida's tax scheme need only be scrutinized for a "conceivable rational basis." Pet. App. 4a-5a, 7a, 8a, 12a, 14a. The courts fundamentally misconstrued *Leathers*. That decision stands only for the unremarkable proposition that differential tax classification of different forms of media, such

as cable service providers and newspapers, is not always inherently suspect. 499 U.S. at 449-450.

The *Leathers* Court, however, not only did not renounce, but actually reaffirmed the holding in *Minneapolis Star* that a targeted exclusion of publishers from a tax exemption, such as Florida's, is subject to strict scrutiny: "Absent a compelling justification, the government may not exercise its taxing power to single out the press." *Leathers*, 499 U.S. at 447 (citing *Grosjean*, 297 U.S. at 244-249; *Minneapolis Star*, 460 U.S. at 585); accord *id.* at 445-446.

This Court's observation in *Leathers* that differential taxation of different speakers "does not implicate the First Amendment unless the tax is directed at, or presents the danger of suppressing, particular ideas," must be understood in context. 499 U.S. at 453. As the Court had explained in *Minneapolis Star*, a tax that "single[s] out the press" for a unique tax burden does suggest that the tax is directed at suppressing particular ideas. Such "differential treatment, unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional." *Minneapolis Star*, 460 U.S. at 585.

The lower courts failed to recognize this critical distinction between this case and *Leathers*: Unlike the taxes challenged in *Minneapolis Star* and the present case, the tax at issue in *Leathers* did not "single[ ] out the press" for a unique tax burden. *Ibid.* Instead, the tax there "applie[d] to receipts from the sale of all tangible personal property and a broad range of services." *Leathers,* 499 U.S. at 447 (listing the numerous business categories subject to the tax). In fact, the comprehensive tax at issue in *Leathers* actually exempted the print media from its burdens.

In contrast, Florida's tax structure offers all manufacturers of goods an exemption from taxation of capital equipment purchases — *except* publishers and printers. Such

differential treatment warrants strict scrutiny because it raises the suspicion that it is a "purposeful attempt to interfere" with the press's "unique role as a check on government abuse, and a tax limited to the press raises concerns about censorship of critical information and opinion." *Leathers*, 499 U.S. at 447.

Under the controlling decisions, though, it is the mere *risk* that the differential classifications may reflect the legislature's punitive or deterrent intent that suffices to treat the differential tax as presumptively unconstitutional, and to subject the tax to strict scrutiny. It is not necessary to prove that improper motives actually animated the differential treatment. The Court expressly held in *Minneapolis Star* that proof of "[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment." 460 U.S. at 592. In *Leathers* the Court explicitly reaffirmed that principle: "*Minneapolis Star* resolved any doubts about whether direct evidence of improper censorial motive is required in order to invalidate a differential tax on First Amendment grounds." 499 U.S. at 445.

There is ample reason to view Florida's approach as presenting at least a risk of improper motivation. History and practice illustrate why the courts should be especially skeptical about politically fashioned distinctions that either impose special taxes on the print media or deny them generally available exemptions. Newspapers and magazines generally cover political issues in more depth than the electronic media. Newspapers provide more critical editorial commentary about public officials and their policies than do the electronic media. So too, newspapers have a more extensive record of searching investigative journalism. Thus, especially at the State and local level, where public officials can most easily contrive burdensome tax regimes, newspapers are an especially inviting target for political retaliation and punitive exaction.

The Florida appellate court, therefore, misinterpreted *Leathers* as authorizing even those differential tax classifications that "single out the press" from all similarly situated businesses, so long as the classification may have any conceivable rational basis. Pet. App. 7a-8a, 12a, 14a. If adopted by other courts, this misinterpretation would dramatically constrict the traditional scope of the First Amendment protection of freedom of the press. Review of the Florida appellate court decision by this Court is necessary to correct that serious error.

B. The Purported Justifications for the Differential Tax Burdens on the Press Are Constitutionally Inadequate.

The trial court in this case declined to apply strict scrutiny for the palpably erroneous reason that the "exception to the exemption is not the imposition of a special tax [on the press], but merely a legislative limitation on an exemption from the generally applicable tax." Pet. App. 13a. This Court has made clear, however, that a discriminatory denial of a tax exemption is just as unconstitutional as a discriminatory affirmative tax. *Minneapolis Star*, 460 U.S. at 583 n.5 (rejecting the State's argument "that the press cannot successfully challenge regulations on the basis of the exemption of other enterprises").

The appellate court sidestepped the trial court's facile approach, recognizing that the critical inquiry is whether the State scheme singles out the press for a special burden, regardless of whether it is imposed through a general tax or exclusion from an otherwise applicable exemption. In its view, though, "[l]ittle guidance is provided in either the case law or the record in front of us as to when the group of people [subject to the tax] is so small [that the tax] constitutes differential treatment of the press." Pet. App. 6a. If the lower courts need more "guidance" to recognize that a universe of one (the print media) or two (print media and restaurants) is small enough to trigger strict scrutiny, then

that is all the more reason for this Court to grant certiorari to provide that guidance.

The Florida appellate court also opined that the legislature would be justified in withholding the exemption from printers and publishers because a "large investment" in facilities to build or expand "a modern printing plant" involves a "highly automated" process. Pet. App. 8a. The implication appears to be that it is appropriate to subject publishers to a tax from which every other manufacturer of goods is exempt, simply because the publishers have determined that their competitive health, if not indeed their survival, depends upon a reduction in labor costs.

This "justification" for the discriminatory tax, however, cannot be squared with the obvious purpose of providing manufacturers with a tax exemption for the purchase of new manufacturing equipment. This program encourages those manufacturers entitled to the exemption to modernize their operations, improve competitive efficiency, and secure the economic benefits of automation. It is therefore unlikely that Florida legislators denied publishers a tax exemption that encourages automation, because the legislators somehow disapproved of the publishers' own automation.

In the same vein, the court below speculated that the Florida legislature "could well have" denied printers and publishers the benefits of the tax exemption it made available to all other manufacturers because those manufacturers "offered special advantages or benefits to Florida such as * * * improvement to quality of life in Florida," whereas "printers [and publishers] did not offer a particular advantage or benefit to Florida." Pet. App. 7a-8a.

It is precisely that danger — that legislators exposed to the hot glare of the print media will decide that newspapers offer no particular benefit, and that the State would be better served by less media coverage — that first inspired this Court to interpret the Constitution as prohibiting differential taxation

of the media. See *Grosjean*, 297 U.S. at 250. Far from justifying deference to legislative prerogatives, as the Florida appellate court believed, (Pet. App. 8a), this suggested motivation for the differential tax warrants searching review.

In sum, the purported justifications for Florida's decision to deny the press the benefits of a generally available tax exemption do not withstand even cursory review. They surely do not hold up under the strict scrutiny required by *Grosjean*, *Minneapolis Star*, and *Leathers* for taxes that single out the print media for burdensome treatment.

Leaving the decision below in force, therefore, not only would deny Florida publishers the benefit of relief to which the First Amendment entitles them; it also would encourage other States to concoct equally flimsy "justifications" for forcing the press to shoulder selective and discriminatory taxes.

IV. NEWSPAPERS FACE INTENSE COMPETITIVE AND COST PRESSURES THAT RENDER THEM PARTICULARLY VULNERABLE TO THE KIND OF SUBSTANTIAL, DIFFERENTIAL TAX BURDEN FLORIDA HAS IMPOSED UPON THEIR CAPITAL INVESTMENTS.

For decades, newspapers have struggled to survive and to perform their important mission amidst increasing competition from other information sources, such as television and radio, and from other targets of advertising revenues, including magazines and direct mail marketing.[3] Meanwhile, increasing costs for labor and raw materials, especially

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[3] See, e.g., Monica Yant, *Tomorrow's Newspaper is Camera-Ready*, St. Petersburg Times, July 16, 1996, at 1A; Mark Fitzgerald, *A Year in Turmoil*, Editor & Publisher, Jan. 6, 1996, at 9.

newsprint, have put additional pressure on the viability of general circulation newspapers.[4]

As a result of these and other market forces, far fewer newspapers exist today than a decade ago,[5] and the circulation levels of existing newspapers are decreasing.[6] Additionally, in part as a result of the increasing costs of running a newspaper, the number of independent publishers has dramatically decreased in recent years.[7]

Indeed, Congress enacted the Newspaper Preservation Act, 15 U.S.C. 1801-1804, which grants newspaper companies certain exceptions to the antitrust laws, because it recognized the severe economic constraints under which newspapers operate and because it was concerned about newspapers' increasing vulnerability. See *Michigan Citizens for An Independent Press* v. *Thornburgh*, 868 F.2d 1285, 1288 (D.C. Cir.), *reh'g denied*, 868 F.2d 1300 (D.C. Cir.), *aff'd by an equally divided Court*, 493 U.S. 38 (1989); see also S. Rep. No. 91-535, at 38 (1969).

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[4] See, e.g., *A Year in Turmoil*, *supra*, note 3; Susannah Patton, *Family Newspapers Struggle to Hang On*, Wall St. J., Feb. 27, 1995, at A7; Mimi Whitefield, *Miami Herald Delays Pay Raises, Citing Newsprint Costs, Ad Revenue Shortfall*, Miami Herald, Mar. 23, 1996, at 1C; Robert Keefe, *Florida's Tampa Tribune Makes Changes in Regional News Section*, St. Petersburg Times, Feb. 1, 1996, at 1E.

[5] See, e.g., David B. Martens, *Special Report*, Presstime, May 1996, at 53; Michele Marchetti, *Extras! Extras!*, 148 Sales & Marketing Management 56 (Mar. 1, 1996).

[6] John Kirkpatrick, *Circulation Slips Nationwide: Higher Prices Among Factors Hurting Figures*, Dallas Morning News, May 1, 1996, at 2D.

[7] *Special Report*, *supra*, note 5; *Family Newspapers Struggle to Hang On*, *supra*, note 4.

Publishing a modern, competitive newspaper requires very heavy capital investment, especially for new presses. The average cost of a new printing press ranges from $16 million to $17 million. In this case, the 6% sales tax Florida imposed on petitioner's new presses and related capital equipment added $1.8 million to its purchase costs. Pet. App. 10a. This substantial 6% tax on publishers may materially affect their decisions whether and when to invest in new capital equipment to expand their circulation.

The burden of the tax may also deter aspiring publishers from opening new publishing companies, because the tax severely compounds the heavy start-up costs they already must confront. For publishers and aspiring publishers who proceed with the investments, the burden of the tax may be a significant disability in their endeavors to create or sustain a viable, healthy enterprise. The differential tax burden thus may hinder the successful expansion of existing publishers and thwart development of new publishing companies.

The *amicus* NAA has 57 members in Florida. To operate successfully and to reach the largest readership, NAA members must upgrade their facilities, including their presses, constantly. The constitutionality of Florida's decision to deny publishers an exemption for new capital equipment, available to all other manufacturers of goods, is of direct, substantial importance to NAA members and to publishers and readers generally.

V. FLORIDA'S RECENT AMENDMENTS TO ITS TAX EXEMPTION SCHEME SIMPLY EXACERBATE THE UNCONSTITUTIONAL SELECTIVITY.

After the decision below, the Florida legislature amended the statute in several respects, but those changes neither moot the petition nor cure the constitutional defects. See Fla. Stat. ch. 96-320 § 15 (1996).

First, the changes are purely prospective. They have no bearing on taxes paid or due, or on refunds refused, because

the printer or publisher was denied the benefit of an exemption unconstitutionally withheld under the prior version of the statute.

Second, while the amendment deletes the denial of the tax exemption to "printing" firms, the statute continues to deny the exemption to many "publishers." As recently amended, the statute challenged by petitioner, Section 212.08(5)(b)5, declares ineligible for the exemption all "publishing firms that do not export at least 50 percent of their finished product out of the state." Thus, on its face, the amended statute creates an even more suspect class of publishers who are to be denied the benefits of an exemption program for which almost every other manufacturer is eligible: publishers whose circulation is focused primarily within the State of Florida.

As discussed in Point III, *supra*, a tax scheme that singles out the press or a segment of the press for heavier burdens is presumptively unconstitutional, if there is any risk that the inequity flows from improper motives. The new distinctions that the Florida legislature has drawn thus frame this question: Why would a State choose to discriminate against *intrastate* commerce in ideas and expression?

One quite plausible explanation suggests the kind of risk that, according to cases from *Grosjean* to *Leathers*, the First Amendment shields newspaper publishers from having to confront -- a risk of official hostility to a vigorous and outspoken press. It is, after all, the State's local newspapers that are most likely to focus on local issues. Newspapers that circulate primarily within the State engage in the most intensive investigative journalism examining how well State and local officials are performing their duties.

Similarly, it is the State's local newspapers that most frequently use their editorial pages to criticize the policies of State and municipal officeholders and to endorse the candidacies of their challengers. It is precisely this

highlighting of in-State public issues that some public officials may find particularly nettlesome.

This Court wisely observed in *Leathers*:

> "The danger from a tax scheme that targets a small number of speakers is the danger of censorship; a tax on a small number of speakers runs the risk of affecting only a limited range of views. The risk is similar to that from content-based regulation: It will distort the market for ideas."

499 U.S. at 448.

Just as the $100,000 exemption from the paper and ink tax in *Minneapolis Star* unconstitutionally targeted large publishers for a discriminatory tax burden, Florida's amended statute improperly targets intrastate publishers, "tailor[ing] the tax so that it singles out a few members of the press." 460 U.S. at 592. Such targeting of a sliver of the publishing industry for a differential tax burden "presents such a potential for abuse that no interest suggested by [the State] can justify the scheme." *Ibid.*; accord *Leathers*, 499 U.S. at 447 ("A tax is also suspect if it targets a small group of speakers.").

Florida's new differential tax is, of course, not squarely before the Court, but it underscores our principal point: Despite *Grosjean*, *Minneapolis Star*, and *Leathers* — which reaffirmed the *Grosjean-Minneapolis Star* doctrine — States like Florida still do not fully appreciate the care the First Amendment requires them to use when they formulate tax measures that treat the press, or segments of the publishing industry, differently from other taxpayers.

To the extent that the court below believed that existing case law provides too "[l]ittle guidance" in determining whether an "exemption affects a group of people so small as to be considered singling out the press for special [adverse]

treatment" (Pet. App. 6a), that lament is a classic invitation for this Court to furnish the additional guidance.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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